

REMARKS

The Official Action mailed October 5, 2009 has been carefully considered. Reconsideration and allowance of the subject application, as amended, are respectfully requested.

Independent claim 1 is amended; claims 7 and 8 have been cancelled without prejudice; and claims 33-39 have been added. No new matter is believed to have been added.

Claim rejections – 35 U.S.C. § 102

Claims 1, 3, 6, 7, and 9 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,299,645 to Ogden (hereinafter “Ogden.”) Applicant respectfully requests reconsideration and withdrawal of this rejection in view of the following comments.

The present Office Action suggests that Ogden discloses an implant 400 that includes a load bearing surface, the surface comprising a body portion comprising a recess 408 and an undercut 406 and an insert 500 at least partially disposed in the recess 408. The present Office Action further suggest that the insert 500 includes a protrusion 505 at least partially received in the undercut 406 and further includes a mounting feature 410. The body portion comprises a metallic material and the insert 500 comprises a polymeric material.

Independent claim 1 has been amended to specify that the insert comprises “a resiliently deformable material hydrogel material configured to deform and at least partially absorb a load force being placed upon said load bearing surface of said insert.” Upon review, Applicants respectfully submit that Ogden is only understood to disclose that the “[t]he bearing member [500] is an ultra high molecular weight polyethylene, (UHMWPE).” (Col. 6, lines 32-33.) Accordingly, the rejection of independent claim 1 under 35 U.S.C. § 102(e) may be withdrawn.

Applicant also respectfully submits that it would not be obvious to modify the bearing member 500 of Ogden to replace the UHMWPE with a hydrogel as recited in amended, independent claim 1. In particular, Applicant respectfully submits that nothing in Ogden is understood to recognize the problem being addressed by independent claim 1, namely, shock absorption. Accordingly, Applicants respectfully submit that Ogden cannot be fairly said to disclose the general conditions. Additionally, Ogden cannot be fairly said to recognize resiliency as a result-effective variable (i.e., a variable which achieves a recognized result). As such,

Applicant respectfully submits that it would not be obvious to modify the bearing member 500 of Odgen to replace the UHMWPE with a hydrogel as recited in amended, independent claim 1.

The remaining claims depend, either directly or indirectly, from independent claim 1. As such, the remaining claims are also believed to be allowable over Odgen by virtue of their own patentable recitations in addition to their dependency from independent claim 1.

Claims 1 and 6 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,599,321 to Hyde, Jr. (hereinafter "Hyde.") Applicant respectfully requests reconsideration and withdrawal of this rejection in view of the following comments.

The present Office Action suggests that the magnet 402B' of Hyde anticipates the insert member of Applicant's independent claim 1. As noted above, independent claim 1 has been amended to specify that the insert comprises "a resiliently deformable material hydrogel material configured to deform and at least partially absorb a load force being placed upon said load bearing surface of said insert." Upon review, nothing in Hyde is understood to teach or suggest that the magnet 402B' is resiliently deformable. In fact, Applicant notes that the present Office Action does not even assert that the magnet 402B' of Hyde is resiliently deformable. Nevertheless, nothing in Hyde is understood to teach or suggest that the magnet 402B' of Hyde comprises a resiliently deformable material *hydrogel material* as generally recited in Applicant's amended, independent claim 1. Accordingly, Applicant respectfully submits that the rejection of independent claim 1 may be withdrawn upon reconsideration.

The remaining claims depend, either directly or indirectly, from independent claim 1. As such, the remaining claims are also believed to be allowable over Hyde by virtue of their own patentable recitations in addition to their dependency from independent claim 1.

Having dealt with all the objections raised by the Examiner, it is respectfully submitted that the present application, as amended, is in condition for allowance. Thus, early allowance is earnestly solicited.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

AMENDMENT

Serial Number: 10/789,545

Filing Date: February 27, 2004

Title: ARTICULAR SURFACE IMPLANT

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Docket:ART03.03

In the event there are any fees due, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,

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